

110TH CONGRESS
2D SESSION

H. R. 7175

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 17), 2008

Received

AN ACT

To amend the Small Business Act to improve the section
7(a) lending program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Small Business Financing Improvements Act of 2008”.

4 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—7(a) LOAN PROGRAM

Sec. 101. Loan pooling.

Sec. 102. Alternative size standard.

TITLE II—504 CDC PROGRAM

Sec. 201. Definitions.

Sec. 202. Eligibility of development companies to be designated as certified de-
velopment companies.

Sec. 203. Definition of rural areas.

Sec. 204. Businesses in low-income areas.

Sec. 205. Combinations of certain goals.

Sec. 206. Refinancing.

Sec. 207. Additional equity injections.

Sec. 208. Loan liquidations.

Sec. 209. Closing costs.

Sec. 210. Uniform leasing policy.

TITLE III—SMALL BUSINESS INVESTMENT COMPANY PROGRAM

Sec. 301. Simplified maximum leverage limits.

Sec. 302. Simplified aggregate investment limitations.

5 **TITLE I—7(a) LOAN PROGRAM**

6 **SEC. 101. LOAN POOLING.**

7 Section 5(g)(1) of the Small Business Act (15 U.S.C.
8 634(g)(1)) is amended—

9 (1) by inserting “(A)” before “The Administra-
10 tion”;

11 (2) by striking the colon and all that follows
12 and inserting a period; and

13 (3) by adding at the end the following:

1 “(B) A trust certificate issued under subparagraph
 2 (A) shall be based on, and backed by, a trust or pool ap-
 3 proved by the Administrator and composed solely of the
 4 guaranteed portion of such loans.

5 “(C) The interest rate on a trust certificate issued
 6 under subparagraph (A) shall be either—

7 “(i) the lowest interest rate on any individual
 8 loan in the pool; or

9 “(ii) the weighted average interest rate of all
 10 loans in the pool, subject to such limited variations
 11 in loan characteristics as the Administrator deter-
 12 mines appropriate to enhance marketability of the
 13 pool certificates.”.

14 **SEC. 102. ALTERNATIVE SIZE STANDARD.**

15 Section 3(a) of the Small Business Act (15 U.S.C.
 16 632(a)) is amended by adding at the end the following:

17 “(5) OPTIONAL SIZE STANDARD.—

18 “(A) IN GENERAL.—The Administrator
 19 shall establish an optional size standard for
 20 business loan applicants under section 7(a) and
 21 development company loan applicants under
 22 title V of the Small Business Investment Act of
 23 1958, which uses maximum tangible net worth
 24 and average net income as an alternative to the
 25 use of industry standards.

“(B) INTERIM RULE.—Until the date on which the optional size standards established under subparagraph (A) are in effect, the alternative size standard in section 121.301(b) of title 13, Code of Federal Regulations, or any successor thereto, may be used by business loan applicants under section 7(a) and development company loan applicants under title V of the Small Business Investment Act of 1958.”.

TITLE II—504 CDC PROGRAM

SEC. 201. DEFINITIONS.

Section 103(6) of the Small Business Investment Act of 1958 (15 U.S.C. 662(6)) is amended to read as follows:

“(6) the term ‘development company’ means an entity incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas in which it is authorized to operate by the Administration, and the term ‘certified development company’ means a development company which the Administration has determined meets the criteria of section 506;”.

1 **SEC. 202. ELIGIBILITY OF DEVELOPMENT COMPANIES TO**
2 **BE DESIGNATED AS CERTIFIED DEVELOP-**
3 **MENT COMPANIES.**

4 Section 506 of the Small Business Investment Act
5 of 1958 (15 U.S.C. 697c) is amended to read as follows:

6 **“SEC. 506. CERTIFIED DEVELOPMENT COMPANIES.**

7 “(a) **AUTHORITY TO ISSUE DEBENTURES.**—A devel-
8 opment company may issue debentures pursuant to this
9 Act if the Administration certifies that the company meets
10 the following criteria:

11 “(1) **SIZE.**—The development company is re-
12 quired to be a small concern with fewer than 500
13 employees and not under the control of any entity
14 which does not meet the Administration’s size stand-
15 ards as a small business, except that any develop-
16 ment company which was certified by the Adminis-
17 tration prior to December 31, 2005 may continue to
18 issue debentures.

19 “(2) **PURPOSE.**—The primary purpose of the
20 development company is to benefit the community by
21 fostering economic development to create and pre-
22 serve jobs and stimulate private investment.

23 “(3) **PRIMARY FUNCTION.**—The primary func-
24 tion of the development company is to accomplish its
25 purpose by providing long term financing to small
26 businesses by the utilization of the Certified Devel-

1 opment Company Economic Development Loan Pro-
2 gram. It may also provide or support such other
3 local economic development activities to assist the
4 community.

5 “(4) NON-PROFIT STATUS.—The development
6 company is a non-profit corporation, except that a
7 development company certified by the Administra-
8 tion prior to January 1, 1987, may retain its status
9 as a for-profit corporation.

10 “(5) GOOD STANDING.—The development com-
11 pany is in good standing in its State of incorpora-
12 tion and in any other State in which it conducts
13 business, and is in compliance with all laws, includ-
14 ing taxation requirements, in its State of incorpora-
15 tion and in any other State in which it conducts
16 business.

17 “(6) MEMBERSHIP.—The development company
18 should have at least 25 members (or stockholders if
19 the corporation is a for-profit entity), none of whom
20 may own or control more than 20 percent of the
21 company’s voting membership, consisting of rep-
22 resentation from each of the following groups (none
23 of which are in a position to control the development
24 company): —

1 “(A) Government organizations that are
2 responsible for economic development.

3 “(B) Financial institutions that provide
4 commercial long term fixed asset financing.

5 “(C) Community organizations that are
6 dedicated to economic development.

7 “(D) Businesses.

8 “(7) BOARD OF DIRECTORS.—The development
9 company has a board of directors that—

10 “(A) is elected from the membership by
11 the members;

12 “(B) should represent at least 3 of the 4
13 groups enumerated in subsection (a)(6) with no
14 group is in a position to control the company;
15 and

16 “(C) meets on a regular basis to make pol-
17 icy decisions for such company.

18 “(8) PROFESSIONAL MANAGEMENT AND
19 STAFF.—The development company has full-time
20 professional management, including a chief executive
21 officer to manage daily operations, and a full-time
22 professional staff qualified to market the Certified
23 Development Company Economic Development Loan
24 Program and handle all aspects of loan approval and
25 servicing, including liquidation, if appropriate. The

1 development company is required to be independ-
2 ently managed and operated to pursue its economic
3 development mission and to employ its chief execu-
4 tive officer directly, with the following exceptions:

5 “(A) A development company may be an
6 affiliate of another local non-profit service cor-
7 poration (specifically excluding another develop-
8 ment company) whose mission is to support
9 economic development in the area in which the
10 development company operates. In such a case:

11 “(i) The development company may
12 satisfy the requirement for full-time pro-
13 fessional staff by contracting with a local
14 non-profit service corporation (or one of its
15 non-profit affiliates), or a governmental or
16 quasi-governmental agency, to provide the
17 required staffing.

18 “(ii) The development company and
19 the local non-profit service corporation may
20 have partially common boards of directors.

21 “(B) A development company in a rural
22 area (as defined in section 501(f)) shall be
23 deemed to have satisfied the requirements of a
24 full-time professional staff and professional
25 management ability if it contracts with another

1 certified development company which has such
2 staff and management ability and which is lo-
3 cated in the same general area to provide such
4 services.

5 “(C) A development company that has
6 been certified by the Administration as of De-
7 cember 31, 2005, and that has contracted with
8 a for-profit company to provide services as of
9 such date may continue to do so.

10 “(b) AREA OF OPERATIONS.—The Administration
11 shall specify the area in which an applicant is certified
12 to provide assistance to small businesses under this title,
13 which may not initially exceed its State of incorporation
14 unless it proposes to operate in a local economic area
15 which is required to include part of its State of incorpora-
16 tion and may include adjacent areas within several States.
17 After a development company has demonstrated its ability
18 to provide assistance in its area of operations, it may re-
19 quest the Administration to be allowed to operate in one
20 or more additional States as a multi-state certified devel-
21 opment company if it satisfies the following criteria:

22 “(1) Each additional State is contiguous to the
23 State of incorporation, except the States of Alaska
24 and Hawaii shall be deemed to be contiguous to any
25 State abutting the Pacific ocean.

1 “(2) It demonstrates its proficiency in making
2 and servicing loans under the Certified Development
3 Company Economic Development Loan Program
4 by—

5 “(A) requesting and receiving designation
6 as an accredited lender under section 507 or a
7 premier certified lender under section 508; and

8 “(B) meeting or exceeding performance
9 standards established by the Administration.

10 “(3) The development company adds to the
11 membership of its State of incorporation additional
12 membership from each additional State and the
13 added membership meets the requirements of sub-
14 section (a)(6).

15 “(4) The development company adds at least
16 one member to its board of directors in the State of
17 incorporation, providing that added member was se-
18 lected by the membership of the development com-
19 pany.

20 “(5) The company meets such other criteria or
21 complies with such conditions as the Administration
22 deems appropriate.

23 “(c) PROCESSING OF EXPANSION APPLICATIONS.—
24 The Administration shall respond to the request of a cer-
25 tified development company for certification as a multi-

1 state company on an expedited basis within 30 days of
2 receipt of a completed application if the application dem-
3 onstrates that the development company meets the re-
4 quirements of subsection (b)(1) through (b)(4).

5 “(d) USE OF FUNDS LIMITED TO STATE WHERE
6 GENERATED.—Any funds generated by a not-for-profit
7 development company from making loans under the Cer-
8 tified Development Company Economic Development
9 Loan Program which remain after payment of staff, oper-
10 ating and overhead expenses shall be retained by the devel-
11 opment company as a reserve for future operations, for
12 expanding its area of operations in a local economic area
13 as authorized by the Administration, or for investment in
14 other local economic development activity in the State
15 from which the funds were generated.

16 “(e) ETHICAL REQUIREMENTS.—

17 “(1) IN GENERAL.—Certified development com-
18 panies, their officers, employees and other staff,
19 shall at all times act ethically and avoid activities
20 which constitute a conflict of interest or appear to
21 constitute a conflict of interest. No one may serve as
22 an officer, director or chief executive officer of more
23 than one certified development company.

24 “(2) PROHIBITED CONFLICT IN PROJECT
25 LOANS.—As part of a project under the Certified

1 Development Company Economic Development Loan
2 Program, no certified development company may
3 recommend or approve a guarantee of a debenture
4 by the Administration that is collateralized by a sub-
5 ordinated lien position on the property being con-
6 structed or acquired and also provide, or be affili-
7 ated with a corporation or other entity, for-profit or
8 non-profit, which provides, financing collateralized
9 by a prior lien on the same property. Upon approval
10 by the Administrator, a business development com-
11 pany that was participating as a first mortgage lend-
12 er, either directly or through an affiliate, for the
13 Certified Development Company Economic Develop-
14 ment Loan Program in either fiscal years 2004 or
15 2005 may continue to do so.

16 “(3) OTHER ECONOMIC DEVELOPMENT ACTIVI-
17 TIES.—Operation of multiple programs to assist
18 small business concerns in order for a certified de-
19 velopment company to carry out its economic devel-
20 opment mission shall not be deemed a conflict of in-
21 terest, but notwithstanding any other provision of
22 law, no development company may accept funding
23 from any source, including but not limited to any de-
24 partment or agency of the United States Govern-
25 ment—

1 “(A) if such funding includes any condi-
2 tions, priorities or restrictions upon the types of
3 small businesses to which they may provide fi-
4 nancial assistance under this title; or

5 “(B) if it includes any conditions or im-
6 poses any requirements, directly or indirectly,
7 upon any recipient of assistance under this title
8 unless the department or agency also provides
9 all of the financial assistance to be delivered by
10 the development company to the small business
11 and such conditions, priorities or restrictions
12 are limited solely to the financial assistance so
13 provided.”.

14 **SEC. 203. DEFINITION OF RURAL AREAS.**

15 Section 501 of the Small Business Investment Act
16 of 1958 (15 U.S.C. 695) is amended by adding at the end
17 the following new subsection:

18 “(f) As used in subsection (d)(3)(D), the term ‘rural’
19 shall include any area other than—

20 “(1) a city or town that has a population great-
21 er than 50,000 inhabitants; and

22 “(2) the urbanized area contiguous and adja-
23 cent to such a city or town.”.

1 **SEC. 204. BUSINESSES IN LOW-INCOME AREAS.**

2 Section 501(d)(3) of the Small Business Investment
3 Act of 1958 (15 U.S.C. 695(d)(3)) is amended by insert-
4 ing after “business district revitalization” the following:
5 “or expansion of businesses in low-income communities
6 that would be eligible for new market tax credit invest-
7 ments under section 45D of the Internal Revenue Code
8 of 1986 (26 U.S.C. 45D)”.

9 **SEC. 205. COMBINATIONS OF CERTAIN GOALS.**

10 Section 501(e) of the Small Business Investment Act
11 of 1958 (15 U.S.C. 695(e)) is amended by adding at the
12 end the following:

13 “(7) A small business concern that is uncondi-
14 tionally owned by more than one individual, or a cor-
15 poration whose stock is owned by more than one in-
16 dividual, is deemed to achieve a public policy goal
17 under subsection (d)(3) if a combined ownership
18 share of at least 51 percent is held by individuals
19 who are in one of the groups listed as public policy
20 goals specified in subsection (d)(3)(C) or
21 (d)(3)(E).”.

22 **SEC. 206. REFINANCING.**

23 Section 502 of the Small Business Investment Act
24 of 1958 (15 U.S.C. 696) is amended by adding at the end
25 the following:

1 “(7) PERMISSIBLE DEBT REFINANCING.—Any
2 financing approved under this title may also include
3 a limited amount of debt refinancing for debt that
4 was not previously guaranteed by the Administra-
5 tion. If the project involves expansion of a small
6 business which has existing indebtedness
7 collateralized by fixed assets, a limited amount may
8 be refinanced and added to the expansion cost, pro-
9 viding—

10 “(A) the proceeds of the indebtedness were
11 used to acquire land, including a building situ-
12 ated thereon, to construct a building thereon or
13 to purchase equipment;

14 “(B) the borrower has been current on all
15 payments due on the existing debt for at least
16 the past year; and

17 “(C) the financing under the Certified De-
18 velopment Company Economic Development
19 Loan Program will provide better terms or rate
20 of interest than now exists on the debt.”.

21 **SEC. 207. ADDITIONAL EQUITY INJECTIONS.**

22 Clause (ii) of section 502(3)(B) of the Small Business
23 Investment Act of 1958 (15 U.S.C. 696(3)(B)) is amend-
24 ed to read as follows:

1 “(ii) FUNDING FROM INSTITU-
2 TIONS.—

3 “(I) If a small business concern
4 provides the minimum contribution re-
5 quired under paragraph (C), not less
6 than 50 percent of the total cost of
7 any project financed pursuant to
8 clauses (i), (ii), or (iii) of subpara-
9 graph (C) shall come from the institu-
10 tions described in subclauses (I), (II),
11 and (III) of clause (i).

12 “(II) If a small business concern
13 provides more than the minimum con-
14 tribution required under paragraph
15 (C), any excess contribution may be
16 used to reduce the amount required
17 from the institutions described in sub-
18 clauses (I), (II), and (III) of clause (i)
19 except that the amount from such in-
20 stitutions may not be reduced to an
21 amount less than the amount of the
22 loan made by the Administration.”.

23 **SEC. 208. LOAN LIQUIDATIONS.**

24 Section 510 of the Small Business Investment Act
25 of 1958 (15 U.S.C. 697g) is amended—

1 (1) by redesignating subsection (e) as sub-
2 section (g); and

3 (2) by inserting after subsection (d) the fol-
4 lowing:

5 “(e) PARTICIPATION.—

6 “(1) MANDATORY.—Any certified development
7 company which elects not to apply for authority to
8 foreclose and liquidate defaulted loans under this
9 section or which the Administration determines to be
10 ineligible for such authority shall contract with a
11 qualified third-party to perform foreclosure and liq-
12 uidation of defaulted loans in its portfolio. The con-
13 tract shall be contingent upon approval by the Ad-
14 ministration with respect to the qualifications of the
15 contractor, the terms and conditions of liquidation
16 activities, and the ability to reimburse such con-
17 tractor.

18 “(2) COMMENCEMENT.—The provisions of this
19 subsection shall not require any development com-
20 pany to liquidate defaulted loans until the Adminis-
21 tration has adopted and implemented a program to
22 compensate and reimburse development companies
23 as provided under subsection (f).

24 “(f) COMPENSATION AND REIMBURSEMENT.—

1 “(1) REIMBURSEMENT OF EXPENSES.—The
2 Administration shall reimburse each certified devel-
3 opment company for all expenses paid by such com-
4 pany as part of the foreclosure and liquidation ac-
5 tivities if the expenses—

6 “(A) were approved in advance by the Ad-
7 ministration either specifically or generally; or

8 “(B) were incurred by the company on an
9 emergency basis without Administration prior
10 approval but which were reasonable and appro-
11 priate.

12 “(2) COMPENSATION FOR RESULTS.—The Ad-
13 ministration shall develop a schedule to compensate
14 and provide an incentive to qualified State or local
15 development companies which foreclose and liquidate
16 defaulted loans. The schedule shall be based on a
17 percentage of the net amount recovered but shall not
18 exceed a maximum amount. The schedule shall not
19 apply to any foreclosure which is conducted pursu-
20 ant to a contract between a development company
21 and a qualified third-party to perform the fore-
22 closure and liquidation.”.

1 **SEC. 209. CLOSING COSTS.**

2 Paragraph (4) of section 503(b) of the Small Busi-
3 ness Investment Act of 1958 (15 U.S.C. 697(b)) is amend-
4 ed to read as follows:

5 “(4) the aggregate amount of such debenture
6 does not exceed the amount of loans to be made
7 from the proceeds of such debenture plus, at the
8 election of the borrower under the Certified Develop-
9 ment Company Economic Development Loan Pro-
10 gram, other amounts attributable to the administra-
11 tive and closing costs of such loans, except for the
12 borrower’s attorney fees;”.

13 **SEC. 210. UNIFORM LEASING POLICY.**

14 (a) IN GENERAL.—Section 502 of the Small Business
15 Investment Act of 1958 (15 U.S.C. 696) is amended

16 (1) by striking paragraphs (4) and (5) and in-
17 serting the following:

18 “(4) LIMITATION ON LEASING.—If the use of a
19 loan under this section includes the acquisition of a
20 facility or the construction of a new facility, the
21 small business concern assisted

22 “(A) shall permanently occupy and use not
23 less than a total of 50 percent of the space in
24 the facility; and

1 “(B) may, on a temporary or permanent
 2 basis, lease to others not more than 50 percent
 3 of the space in the facility.”; and

4 (2) by redesignating paragraph (6) as para-
 5 graph (5).

6 (b) POLICY FOR 7(A) LOANS.—Section 7(a)(28) of
 7 the Small Business Act (15 U.S.C. 636(a)(28)) is amend-
 8 ed to read as follows:

9 “(28) LIMITATION ON LEASING.—If the use of
 10 a loan under this subsection includes the acquisition
 11 of a facility or the construction of a new facility, the
 12 small business concern assisted

13 “(A) shall permanently occupy and use not
 14 less than a total of 50 percent of the space in
 15 the facility; and

16 “(B) may, on a temporary or permanent
 17 basis, lease to others not more than 50 percent
 18 of the space in the facility.”.

19 **TITLE III—SMALL BUSINESS IN-**
 20 **VESTMENT COMPANY PRO-**
 21 **GRAM**

22 **SEC. 301. SIMPLIFIED MAXIMUM LEVERAGE LIMITS.**

23 Section 303(b) of the Small Business Investment Act
 24 of 1958 (15 U.S.C. 683(b)) is amended—

1 (1) by striking paragraph (2) and inserting the
2 following:

3 “(2) MAXIMUM LEVERAGE.—

4 “(A) IN GENERAL.—The maximum
5 amount of outstanding leverage made available
6 to any one company licensed under section
7 301(c) of this Act may not exceed the lesser
8 of—

9 “(i) 300 percent of such company’s
10 private capital; or

11 “(ii) \$150,000,000.

12 “(B) MULTIPLE LICENSES UNDER COM-
13 MON CONTROL.—The maximum amount of out-
14 standing leverage made available to two or more
15 companies licensed under section 301(c) of this
16 Act that are commonly controlled (as deter-
17 mined by the Administrator) and not under
18 capital impairment may not exceed
19 \$225,000,000.”; and

20 (2) by striking paragraph (4).

21 **SEC. 302. SIMPLIFIED AGGREGATE INVESTMENT LIMITA-**
22 **TIONS.**

23 Section 306(a) of the Small Business Investment Act
24 of 1958 (15 U.S.C. 686(a)) is amended to read as follows:

1 “(a) PERCENTAGE LIMITATION ON PRIVATE CAP-
2 ITAL.—If any small business investment company has ob-
3 tained financing from the Administration and such financ-
4 ing remains outstanding, the aggregate amount of securi-
5 ties acquired and for which commitments may be issued
6 by such company under the provisions of this title for any
7 single enterprise shall not, without the approval of the Ad-
8 ministration, exceed 10 percent of the sum of—

9 “(1) the private capital of such company; and

10 “(2) the total amount of leverage projected by
11 the company in the company’s business plan that
12 was approved by the Administration at the time of
13 the grant of the company’s license.”.

Passed the House of Representatives September 29,
2008.

Attest:

LORRAINE C. MILLER,

Clerk.